

**BELLSOUTH PHYSICAL COLLOCATION
MASTER AGREEMENT**

THIS AGREEMENT, made this _____ day of _____, 19____, by and between BellSouth Telecommunications, Inc., ("BellSouth") a corporation organized and existing under the laws of the State of Georgia, and _____, ("Interconnector") a (corporation) organized and existing under the laws of _____;

WITNESSETH

WHEREAS, Interconnector wishes the right to occupy the BellSouth Central Office(s) delineated herein for the purpose of interconnection to BellSouth's facilities;

WHEREAS, BellSouth has space available in its Central Office(s) which Interconnector desires to utilize; and

WHEREAS, BellSouth is willing to make such space available to Interconnector within its Central Office(s) subject to all terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. SCOPE OF AGREEMENT

A. BellSouth hereby grants to Interconnector a right to occupy that certain enclosed area designated by BellSouth within a BellSouth Central Office, of a size and dimension which is specified by Interconnector and agreed to by BellSouth (hereinafter "Collocation Space"). BellSouth will design and construct at Interconnector's expense, a wall or other delineation to establish a clear division between the Collocation Space and other areas of the Central Office dedicated to BellSouth's use.

B. Interconnector shall use the Collocation Space for the purposes of installing, maintaining and operating Interconnector's equipment (to include testing and monitoring equipment) which is used to interconnect with telecommunications services and facilities provided by BellSouth. Pursuant to Article III, following, Interconnector may place Interconnector-owned fiber entrance facilities to the Collocation Space, in which case the arrangement is designated "Expanded Interconnection." Placement of equipment in the Collocation Space without the use of Interconnector-owned entrance facilities is designated "Service Interconnection." In addition to, and not in lieu of, interconnection to BellSouth services and facilities, Interconnector may connect to other interconnectors within the designated Central Office. The Collocation Space may be used for no other purposes except as specifically described herein or authorized in writing by BellSouth.

C. Interconnector may not provide or make available space within the Collocation Space to any third party. Any violation of this provision shall be deemed a material breach of this Agreement.

D. Interconnector agrees to pay the rates and charges identified at Exhibit A attached hereto.

E. A Collocation Space will be provided to Interconnector at each Central Office identified at Exhibit B attached hereto, which Exhibit shall be updated from time to time as additional Central Offices are made subject to the terms of this Agreement.

II. **TERM OF AGREEMENT**

A. Term. The term of this Agreement shall be for an initial period of two (2) years, beginning on the Agreement date stated above and ending two (2) years later on the month and day corresponding to such date.

B. Commencement Date. The "Commencement Date" shall be the first day after Interconnector's equipment becomes operational as described in Article II.B, following.

C. Occupancy. BellSouth will notify Interconnector that the Collocation Space is ready for occupancy. Interconnector must place operational telecommunications equipment in the Collocation Space and connect with BellSouth's network within one hundred eighty (180) days after receipt of such notice. BellSouth may consent to an extension beyond 180 days upon a demonstration by Interconnector that circumstances beyond its reasonable control prevented Interconnector from completing installation by the prescribed date. If Interconnector fails to place operational telecommunications equipment in the Collocation Space within 180 days and such failure continues for a period of thirty (30) days after receipt of written notice from BellSouth, then and in that event Interconnector's right to occupy the Collocation Space terminates and BellSouth shall have no further obligations to Interconnector with respect to said Collocation Space. Termination of Interconnector's rights to the Collocation Space pursuant to this paragraph shall not operate to release Interconnector from its obligation to reimburse BellSouth for all costs reasonably incurred by BellSouth in preparing the Collocation Space, but rather such obligation shall survive this Agreement. For purposes of this paragraph, Interconnector's telecommunications equipment will be deemed operational when cross-connected to BellSouth's network for the purpose of service provision.

D. Termination. Interconnector may terminate occupancy in a particular Collocation Space upon thirty (30) days prior written notice to BellSouth. Upon termination of such occupancy, Interconnector at its expense shall remove its equipment and other property from the Collocation Space. Interconnector shall have thirty (30) days from the termination date to complete such removal; provided, however, that Interconnector shall continue payment of monthly fees to BellSouth until such date as Interconnector has fully vacated the Collocation Space. Should Interconnector fail to vacate the Collocation Space within thirty (30) days from the termination date, BellSouth shall have the right to remove the equipment and other property of Interconnector at Interconnector's expense and with no liability for damage or injury to Interconnector's property unless caused by the negligence or intentional misconduct of BellSouth.

III. *USE OF COLLOCATION SPACE*

A. Nature of Use. BellSouth shall permit Interconnector to place, maintain and operate in the Collocation Space any equipment that Interconnector is authorized by BellSouth and by Federal or State regulators to place, maintain and operate in collocation space and that is used by Interconnector to provide services which Interconnector has the legal authority to provide. The equipment must at a minimum comply with the BellCore Network Equipment Building System (NEBS) General Equipment Requirements (TR-NWT-000063) and National Electric Code standards. Interconnector may elect to enclose the Collocation Space. Interconnector shall not use the Collocation Space for marketing purposes. Interconnector shall place no signs or marking of any kind (except for a plaque or other identification affixed to Interconnector's equipment and reasonably necessary to identify Interconnector's equipment, and which shall include a list of emergency contacts with telephone numbers), in the area surrounding the Collocation Space or on the grounds of the Central Office housing the Collocation Space.

B. Entrance Facilities. Interconnector may elect to place Interconnector-owned entrance facilities into the Collocation Space. BellSouth will designate the point of interconnection in proximity to the central office building housing the Collocation Space, such as an entrance manhole or a cable vault. Interconnector will provide and place cable at the point of interconnection of sufficient length to be pulled through conduit and into the splice location. No splicing will be permitted in the entrance manhole. Interconnector will provide a sufficient length of fire retardant riser cable, to which the entrance cable will be spliced, which will extend from the splice location to the Interconnector's equipment in the Collocation Space. Interconnector must contact BellSouth for instructions prior to placing the entrance facility cable in the manhole. Interconnector is responsible for maintenance of the entrance facilities. Dual entrance will be permitted where capacity exists. The interconnection point for entrance facilities extending from a rooftop antenna will be designated by BellSouth on the Application/Inquiry response.

C. Demarcation Point. A point-of-termination bay(s) will designate the point(s) of interconnection between Interconnector's equipment and/or network and BellSouth's network. Each party will be responsible for maintenance and operation of all equipment/facilities on its side of the demarcation point. Interconnector may, at its option, provide its own point-of-termination bay(s) in accordance with BellSouth's guidelines and specifications, which BellSouth will provide upon request.

D. Interconnector's Equipment and Facilities. Interconnector is solely responsible for the design, engineering, testing, performance, monitoring, maintenance, and repair of the equipment and facilities used by Interconnector in the Collocation Space. Without limitation of the foregoing provisions, Interconnector will be responsible for servicing, supplying, repairing, installing and maintaining the following: (1) cable(s); (2) equipment; (3) point-of-termination cross-connects; (4) point of termination maintenance, including replacement fuses and circuit breaker restoration, if not performed by BellSouth; and (5) connection cable(s) and associated equipment which may be required within the Collocation Space to the points of interconnection.

E. Easement Space. From time to time BellSouth may require access to the Collocation Space. BellSouth retains the right to access such space for the purpose of making equipment and building modifications (e.g., running, altering or removing racking, ducts, electrical wiring, HVAC, and cables). BellSouth will give reasonable notice to Interconnector when access to the Collocation Space is required. Interconnector may elect to be present whenever BellSouth performs work in the Collocation Space. The Parties agree that Interconnector will not bear any of the expense associated with this work.

F. Access and Administration. Interconnector shall have access to the Collocation Space twenty-four (24) hours a day, seven (7) days a week. A security escort will be required at Central Offices where separate, secured ingress and egress are not available and access would require Interconnector to traverse restricted areas. All employees, agents and contractors of Interconnector having access to the Collocation Space shall comply with BellSouth's policies and practices pertaining to fire, safety and security, and each such employee, agent or contractor shall display an identification badge issued by Interconnector or certified vendor which contains a current photo, the individual's name and company name/logo. Interconnector agrees to comply with all laws, ordinances and regulations affecting the use of the Collocation Space. Upon expiration of this Agreement, Interconnector shall surrender the Collocation Space to BellSouth in the same condition as when first occupied by the Interconnector except for ordinary wear and tear.

G. Interference or Impairment. Notwithstanding any other provisions of this Agreement, equipment and facilities placed in the Collocation Space shall not interfere with or impair service provided by BellSouth or by any other interconnector located in the Central Office; shall not endanger or damage the facilities of BellSouth or of any other interconnector, the Collocation Space, or the Central Office; shall not compromise the privacy of any communications carried in, from, or through the Central Office; and shall not create an unreasonable risk of injury or death to any individual or to the public. If BellSouth reasonably determines that any equipment or facilities of Interconnector violate the provisions of this paragraph, BellSouth shall give written notice to Interconnector, which notice shall direct Interconnector to cure the violation within twenty-four (24) hours or, at a minimum, to commence curative measures within 24 hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. If Interconnector fails to take curative action within 24 hours or if the violation is of a character which poses an immediate and substantial threat of damage to property, injury or death to any person, or interference/impairment of the services provided by BellSouth, then and only in that event BellSouth may take such action as it deems appropriate to correct the violation, including without limitation the interruption of electrical power to Interconnector's equipment. BellSouth will endeavor, but is not required, to provide notice to Interconnector prior to taking such action and shall have no liability to Interconnector for any damages arising from such action, except to the extent that such action by BellSouth constitutes willful misconduct.

H. Personalty and its Removal. Subject to requirements of this Agreement, Interconnector may place or install in or on the Collocation Space such facilities and equipment as it deems desirable for the conduct of business. Personal property, facilities and equipment placed by Interconnector in the Collocation Space shall not become a part of the Collocation Space, even if nailed, screwed or otherwise fastened to the Collocation Space, but shall retain their status as personalty and may be removed by Interconnector at any time. Any damage caused to the Collocation Space by Interconnector's employees, agents or representatives during the removal of such property shall be promptly repaired by Interconnector at its expense.

I. Alterations. In no case shall Interconnector or any person acting on behalf of Interconnector make any rearrangement, modification, improvement, addition, repair, or other alteration to the Collocation Space or the BellSouth Central Office without the written consent of BellSouth, which consent shall not be unreasonably withheld. The cost of any such specialized alterations shall be paid by Interconnector.

IV. ORDERING AND PREPARATION OF COLLOCATION SPACE

A. Application for Space. Interconnector shall submit to BellSouth a complete and accurate Application and Inquiry document, together with payment of the Application Fee as stated in Exhibit A. The Application shall contain a detailed description and schematic drawing of the equipment to be placed in Interconnector's Collocation Space(s) and an estimate of the amount of square footage required. BellSouth will respond to Interconnector's Application in writing following the completion of review, planning and design activities. Such response will include estimates on space availability, space preparation costs and space availability dates. In the event BellSouth cannot provide the requested Collocation Space, BellSouth shall refund the Application Fee to Interconnector.

B. Bona Fide Firm Order. Interconnector shall indicate its intent to proceed with equipment installation in a BellSouth Central Office by submitting a Bona Fide Firm Order to BellSouth. A Bona Fide Firm Order requires Interconnector to complete the Application/Inquiry process described in Article IV.A preceding, submit an updated Application document based on the outcome of the Application/Inquiry process, and pay all applicable fees referenced in Article V, following. The Bona Fide Firm Order must be received by BellSouth no later than thirty (30) days after BellSouth's response to Interconnector's Application/Inquiry. Space preparation for the Collocation Space will not begin until BellSouth receives the Bona Fide Firm Order and all applicable fees.

C. Use of Certified Vendor. Interconnector shall select an equipment installation vendor which has been approved as a BellSouth Certified Vendor to perform all engineering and installation work required in the Collocation Space. BellSouth shall provide Interconnector with a list of Certified Vendors upon request. The Certified Vendor shall be responsible for installing Interconnector's equipment and components, extending power cabling to the BellSouth power distribution frame, performing operational tests after installation is complete, and notifying BellSouth's equipment engineers and Interconnector upon successful completion of installation. The Certified Vendor shall bill Interconnector directly for all work performed for Interconnector pursuant to this Agreement and BellSouth shall have no liability for nor responsibility to pay such charges imposed by the Certified Vendor.

D. Alarm and monitoring. BellSouth shall place environmental alarms in the Central Office for the protection of BellSouth equipment and facilities. Interconnector shall be responsible for placement, monitoring and removal of environmental and equipment alarms used to service the Collocation Space. Upon request, BellSouth will provide Interconnector with applicable tariffed service(s) to facilitate remote monitoring of collocated equipment by Interconnector.

E. Basic Telephone Service. Upon request of Interconnector, BellSouth will provide basic telephone service to the Collocation Space under the rates, terms and conditions of the current tariff offering for the service requested.

F. Space Preparation. BellSouth shall pro rate the costs of any renovation or upgrade to Central Office space or support mechanisms which is required to accommodate physical collocation. Interconnector's pro rated share will be calculated by multiplying such cost by a percentage equal to the amount of square footage occupied by Interconnector divided by the total Central Office square footage receiving renovation or upgrade. For this section, support mechanisms provided by BellSouth may include, but not be limited to heating/ventilation/air conditioning (HVAC) equipment, HVAC duct work, cable support structure, fire wall(s), mechanical upgrade, asbestos abatement, ground plane addition, or separate ingress/egress construction. Such renovation or upgrade will be evaluated and the charges

assessed on a per Central Office basis. BellSouth will make reasonable efforts to provide for occupancy of the Collocation Space on the negotiated date and will advise Interconnector of delays. Interconnector agrees BellSouth shall not be liable to Interconnector for delays in providing possession of the Collocation Space.

G. Space Enclosure. Upon request of Interconnector, BellSouth shall construct an equipment arrangement enclosure of a size and dimension jointly agreed upon by the Parties. Interconnector may request enclosed floor space in increments of one hundred (100) square feet, with a minimum of one hundred (100) square feet. Interconnector may, at its option, arrange with a BellSouth certified contractor to construct the space enclosure in accordance with BellSouth's guidelines and specifications. Such contractor shall directly bill Interconnector for activities associated with the space enclosure construction.

H. Cancellation. If Interconnector cancels its order for the Collocation Space(s), Interconnector will reimburse BellSouth for any expenses incurred up to the date that written notice of the cancellation is received. In no event will the level of reimbursement under this paragraph exceed the maximum amount Interconnector would have otherwise paid for work undertaken by BellSouth if no cancellation of the order had occurred.

V. **RATES AND CHARGES**

Interconnector shall pay for Collocation Space(s) according to the rates contained in Exhibit A attached hereto and pursuant to the following:

A. Non-recurring Fees. In addition to the Application Fee referenced in Article IV preceding, Interconnector shall remit payment of a Cable Installation Fee, Space Construction Fee, as applicable, and one-half (1/2) of the estimated Space Preparation Fee coincident with submission of a Bona Fide Firm Order. The outstanding balance of the actual Space Preparation Fee shall be due thirty (30) days following Interconnector's receipt of a bill or invoice from BellSouth. BellSouth shall provide documentation to establish the actual Space Preparation Fee. Cable Installation Fee(s) are assessed per entrance fiber placed. No Cable Installation Fee is required for Service Interconnection. The Space Preparation Fee will be pro rated as prescribed in Article IV.F preceding. The Space Enclosure Construction Fee will be assessed for the materials and installation cost of the equipment enclosure. BellSouth's engineering and other labor time associated with establishing the Physical Collocation Arrangement will be assessed as Additional Engineering charges, under provisions in BellSouth's F.C.C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges will be provided by BellSouth to Interconnector in the Application Response.

B. Floor Space. The floor space charge includes charges for lighting, heat, air conditioning, ventilation and other allocated expenses associated with maintenance of the Central Office but does not include amperage necessary to power Interconnector's equipment. When the Collocation Space is enclosed by walls or other divider, Interconnector shall pay floor space charges based upon the number of square feet so enclosed. When the Collocation Space is not enclosed, Interconnector shall pay floor space charges based upon the number of square feet contained in a shadow print of Interconnector's equipment racks and POT bay, plus a factor of 2.50 multiplied by the shadow print, which represents Interconnector's share of wiring and provisioning aisle space for provisioning and maintenance activities. Floor space charges are due beginning with the date on which BellSouth releases the Collocation Space for occupancy or on the date Interconnector first occupies the Collocation Space, whichever is sooner.

C. Power. Charges for -48V DC power will be assessed per ampere per month based upon the certified vendor engineered and installed power feed fused ampere capacity. Rates include redundant feeder fuse positions (A&B) and cable rack to Interconnector's equipment or space enclosure. Fuses and power feed cables (A&B) must be engineered (sized), furnished and installed by Interconnector's certified vendor. The Interconnector's certified vendor must also provide a copy of the engineering power specification prior to the Commencement Date. In the event BellSouth shall be required to construct additional DC power plant or upgrade the existing DC power plant in a central office as a result of Interconnector's request to collocate in that central office ("Power Plant Construction"), Interconnector shall pay all costs associated with the Power Plant Construction. The determination of whether Power Plant Construction is necessary shall be within BellSouth's sole, but reasonable, discretion. BellSouth will notify Interconnector of the need for the Power Plant Construction and will estimate the costs associated with the Power Plant Construction if BellSouth were to perform the Power Plant Construction. Interconnector shall pay BellSouth one-half of the estimated Power Plant Construction costs prior to commencement of the work. Interconnector shall pay BellSouth the balance due (actual cost less one-half of the estimated cost) within thirty (30) days of completion of the Power Plant Construction. Interconnector has the option to perform the Power Plant Construction itself; provided, however, that such work shall be performed by a BellSouth certified contractor and such contractor shall comply with BellSouth's guidelines and specifications. Where the Power Plant Construction results in construction of a new power plant room, upon termination of this Agreement Interconnector shall have the right to remove its equipment from the power plant room, but shall otherwise leave the room intact. Where the Power Plant Construction results in an upgrade to BellSouth's existing power plant, upon termination of this Agreement, such upgrades shall become the property of BellSouth.

D. Security Escort. A security escort will be required whenever Interconnector or its approved agent desires access to the entrance manhole or must traverse a restricted area within BellSouth's central office. Rates for a BellSouth security escort are assessed in one-half (1/2) hour increments according to the schedule appended hereto as Exhibit A.

E. Rate "True-Up". The Parties agree that the interim prices reflected herein shall be "trued-up" (up or down) based on final prices either determined by further agreement or by final order, including any appeals, in a proceeding involving BellSouth before the regulatory authority for the State in which the services are being performed or any other body having jurisdiction over this agreement (hereinafter "Commission"). Under the "true-up" process, the interim price for each service shall be multiplied by the volume of that service purchased to arrive at the total interim amount paid for that service ("Total Interim Price"). The final price for that service shall be multiplied by the volume purchased to arrive at the total final amount due ("Total Final Price"). The Total Interim Price shall be compared with the Total Final Price. If the Total Final Price is more than the Total Interim Price, Interconnector shall pay the difference to BellSouth. If the Total Final Price is less than the Total Interim Price, BellSouth shall pay the difference to Interconnector. Each party shall keep its own records upon which a "true-up" can be based and any final payment from one party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such "true-up," the Parties agree that the Commission shall be called upon to resolve such differences.

F. Other. Payment of all other charges under this Agreement shall be due thirty (30) days after receipt of the bill (payment due date). Interconnector will pay a late payment charge of one and one-half percent (1-1/2%) assessed monthly on any balance which remains unpaid after the payment due date.

VI. INSURANCE

A. Interconnector shall, at its sole cost and expense, procure, maintain, and keep in force insurance as specified in this Article VI and underwritten by insurance companies licensed to do business in the states contained in Exhibit B attached hereto and having a BEST Insurance Rating of B ++ X (B ++ ten).

B. Interconnector shall maintain the following specific coverages:

1. Commercial General Liability coverage in the amount of ten million dollars (\$10,000,000.00) or a combination of Commercial General Liability and Excess/Umbrella coverage totaling not less than ten million dollars (\$10,000,000.00). BellSouth shall be named as an ADDITIONAL INSURED on ALL applicable policies as specified herein.

2. Statutory Workers Compensation coverage and Employers Liability coverage in the amount of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee by disease, and five hundred thousand dollars (\$500,000.00) policy limit by disease.

3. Interconnector may elect to purchase business interruption and contingent business interruption insurance, having been advised that BellSouth assumes no liability for loss of profit or revenues should an interruption of service occur.

C. The limits set forth in Article VI.B above may be increased by BellSouth from time to time during the term of this Agreement upon thirty (30) days notice to Interconnector to at least such minimum limits as shall then be customary with respect to comparable occupancy of BellSouth structures.

D. All policies purchased by Interconnector shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by BellSouth. All insurance must be in effect on or before the date equipment is delivered to BellSouth's Central Office and shall remain in effect for the term of this Agreement or until all Interconnector's property has been removed from BellSouth's Central Office, whichever period is longer. If Interconnector fails to maintain required coverages, BellSouth may pay the premiums thereon and seek reimbursement of same from Interconnector.

E. Interconnector shall submit certificates of insurance reflecting the coverages required pursuant to this Section a minimum of ten (10) days prior to the commencement of any work in the Collocation Space. Failure to meet this interval may result in construction and equipment installation delays. Interconnector shall arrange for BellSouth to receive thirty (30) days advance notice of cancellation from Interconnector's insurance company. Interconnector shall forward a certificate of insurance and notice of cancellation to BellSouth at the following address:

BellSouth Telecommunications, Inc.
Attn.: Risk Management Coordinator
3535 Colonnade Parkway, S9A1
Birmingham, Alabama 35243

F. Interconnector must conform to recommendations made by BellSouth's fire insurance company to the extent BellSouth has agreed to, or shall hereafter agree to, such recommendations.

G. Failure to comply with the provisions of this Section will be deemed a material breach of this Agreement.

VII. MECHANICS LIENS

If any mechanics lien or other liens shall be filed against property of BellSouth, or any improvement thereon by reason of or arising out of any labor or materials furnished or alleged to have been furnished or to be furnished to or for Interconnector or by reason of any changes, or additions to BellSouth property made at the request or under the direction of the Interconnector, Interconnector shall, within thirty (30) days after receipt of written notice from BellSouth either pay such lien or cause the same to be bonded off BellSouth's property in the manner provided by law. Interconnector shall also defend on behalf of BellSouth, at Interconnector's sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such liens and Interconnector shall pay any damage and discharge any judgment entered thereon.

VIII. INSPECTIONS

BellSouth shall conduct an inspection of Interconnector's equipment and facilities in the Collocation Space(s) prior to the activation of facilities between Interconnector's equipment and equipment of BellSouth. BellSouth may conduct an inspection if Interconnector adds equipment and may otherwise conduct routine inspections at reasonable intervals mutually agreed upon by the Parties. BellSouth shall provide Interconnector with a minimum of forty-eight (48) hours or two (2) business days, whichever is greater, advance notice of all such inspections.

IX. SECURITY

Only BellSouth employees, BellSouth certified vendors and authorized employees or agents of Interconnector will be permitted in the BellSouth Central Office. Interconnector shall provide its employees and agents with picture identification which must be worn and visible at all times while in the Collocation Space or other areas in or around the Central Office. BellSouth may refuse entry to any person who fails to display the identification required by this section.

X. INDEMNITY / LIMITATION OF LIABILITY

A. Interconnector shall be liable for any damage to property, equipment or facilities or injury to person caused by the activities of Interconnector, its agents or employees pursuant to, or in furtherance of, rights granted under this Agreement. Interconnector shall indemnify and hold BellSouth harmless from and against any judgments, fees, costs or other expenses resulting or claimed to result from such activities by Interconnector, its agents or employees.

B. BellSouth shall not be liable to Interconnector for any interruption of Interconnector's service or for interference with the operation of Interconnector's communications facilities, or for any special, indirect, incidental or consequential damages arising in any manner, including BellSouth's negligence, out of the use of the Collocation Space(s) and Interconnector shall indemnify, defend and hold BellSouth harmless from and against any and all claims, demands, causes of action, costs and reasonable attorneys' fees with respect to such special, indirect, incidental or consequential damages.

XI. PUBLICITY

Interconnector agrees to submit to BellSouth all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement or mentioning or implying the tradenames, logos, trademarks or service marks (hereinafter "Marks") of BellSouth Corporation and/or any of its affiliated companies or language from which the connection of said Marks therewith may be inferred or implied, or mentioning or implying the names of any personnel of BellSouth Corporation and/or any of its affiliated companies, and Interconnector further agrees not to publish or use such advertising, sales promotions, press releases, or publicity matters without BellSouth's prior written consent.

XII. DESTRUCTION OF COLLOCATION SPACE

In the event a Collocation Space is wholly or partially damaged by fire, windstorm, tornado, flood or by similar causes to such an extent as to be rendered wholly unsuitable for Interconnector's permitted use hereunder, then either party may elect within ten (10) days after such damage, to terminate this Agreement, and if either party shall so elect, by giving the other written notice of termination, both parties shall stand released of and from further liability under the terms hereof. If the Collocation Space shall suffer only minor damage and shall not be rendered wholly unsuitable for Interconnector's permitted use, or is damaged and the option to terminate is not exercised by either party, BellSouth covenants and agrees to proceed promptly without expense to Interconnector, except for improvements not the property of BellSouth, to repair the damage. BellSouth shall have a reasonable time within which to rebuild or make any repairs, and such rebuilding and repairing shall be subject to delays caused by storms, shortages of labor and materials, government regulations, strikes, walkouts, and causes beyond the control of BellSouth, which causes shall not be construed as limiting factors, but as exemplary only. Where allowed and where practical in the sole judgment of BellSouth, Interconnector may erect a temporary facility while BellSouth rebuilds or makes repairs. In all cases where the Collocation Space shall be rebuilt or repaired, Interconnector shall be entitled to an equitable abatement of rent and other charges, depending upon the unsuitability of the Collocation Space for Interconnector's permitted use, until such Collocation Space is fully repaired and restored and Interconnector's equipment installed

therein (but in no event later than thirty (30) days after the Collocation Space is fully repaired and restored).

XIII. EMINENT DOMAIN

If the whole of a Collocation Space shall be taken by any public authority under the power of eminent domain, then this Agreement shall terminate as of the day possession shall be taken by such public authority and rent and other charges for the Collocation Space shall be paid up to that day with proportionate refund by BellSouth of such rent and charges as may have been paid in advance for a period subsequent to the date of the taking. If any part of the Collocation Space shall be taken under eminent domain, BellSouth and Interconnector shall each have the right to terminate this Agreement and declare the same null and void, by written notice of such intention to the other party within ten (10) days after such taking.

XIV. FORCE MAJEURE

Neither party shall be in default by reason of any failure in performance of this Agreement, in accordance with its terms and conditions, if such failure arises out of causes beyond the control of the nonperforming party including, but not restricted to, acts of God, acts of government, insurrections, fires, floods, accidents, epidemics, quarantines, restrictions, strikes, freight embargoes, inability to secure raw materials or transportation facilities, acts or omissions of carriers or any and all other causes beyond the party's control.

XV. ASSIGNMENT

Interconnector acknowledges that this Agreement does not convey any right, title or interest in the Central Office to Interconnector. Interconnector may not sublet its rights under this Agreement, nor shall it allow a third party to use or occupy the Collocation Space at any time or from time to time without the prior written consent, and at the sole discretion, of BellSouth. This Agreement is not assignable by either party without the prior written consent of the other party, and any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void. Notwithstanding the foregoing, either party may assign any rights, duties or obligations of this Agreement to a parent, subsidiary or affiliate without the consent of the other party.

XVI. NONEXCLUSIVITY

Interconnector understands that this Agreement is not exclusive and that BellSouth may enter into similar agreements with other parties. Assignment of space pursuant to all such agreements shall be determined by space availability and made on a first come, first served basis.

XVII. NO IMPLIED WAIVER

No consent or waiver by either party to or of any breach of any covenant, term, condition, provision or duty of the other party under this Agreement shall be construed as a consent to or waiver of any other breach of the same or any other covenant, term, condition, provision or duty. No such consent or waiver shall be valid unless in writing and signed by the party granting such consent or waiver.

XVIII. NOTICES

Except as otherwise provided herein, any notices or demands that are required by law or under the terms of this Agreement shall be given or made by Interconnector or BellSouth in writing and shall be given by hand delivery, or by certified or registered mail, and addressed to the parties as follows:

To BellSouth:

ATTN: _____

To Interconnector:

ATTN: _____

Such notices shall be deemed to have been given in the case of certified or registered mail when deposited in the United States mail with postage prepaid.

XIX. RESOLUTION OF DISPUTES

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will petition the Commission in the state where the services are provided pursuant to this Agreement for a resolution of the dispute. However, each party reserves any rights it may have to seek judicial review of any ruling made by the Public Service Commission concerning this Agreement.

XX. SECTION HEADINGS

The section headings used herein are for convenience only, and shall not be deemed to constitute integral provisions of this Agreement.

XXI. AUTHORITY

Each of the parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf and that no consent from any other person or entity is required as a condition precedent to the legal effect of this Agreement.

XXII. REVIEW OF AGREEMENT

The parties acknowledge that each has had an opportunity to review and negotiate this Agreement and has executed this Agreement only after such review and negotiation. The Parties further agree that this Agreement shall be deemed to have been drafted by both BellSouth and Interconnector and the terms and conditions contained herein shall not be construed any more strictly against one party or the other.

XXIII. ENTIRE AGREEMENT

This Agreement contains the full understanding of the Parties (superseding all prior or contemporaneous correspondence between the Parties) and shall constitute the entire agreement between BellSouth and Interconnector and may not be modified or amended other than by a written instrument signed by both parties. If any conflict arises between the terms and conditions contained in this Agreement and those contained in a filed tariff, the terms and conditions of this Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the day and year first above written.

BELLSOUTH TELECOMMUNICATIONS,
INC.

INTERCONNECTOR
(Full Company Name)

Authorized Signature

Authorized Signature

Print or Type Name

Print or Type Name

Title

Title

Date

Date

EXHIBIT A

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Schedule of Rates and Charges

<u>Rate Element Description</u>		<u>Type of Charge</u>	<u>Charge</u>
Application Fee		NRC (per Arrangement, per C.O.)	\$3,850.00
Subsequent Application Fee (Note 1)		NRC (per Arrangement, per C.O.)	\$1,600.00
Space Preparation Fee (Note 2)		NRC (per Arrangement, per C.O.)	ICB
Space Enclosure Construction Fee (Note 2)		NRC (per 100 square feet)	\$4,500.00
Additional Engineering Fee (Note 3)		NRC	ICB
Cable Installation		NRC (per entrance cable)	\$2,750.00
Floor Space	Zone A	RC (per square foot)	\$7.50
	Zone B	RC (per square foot)	\$6.75
Power		RC (per amp)	\$5.00
Cable Support structure		RC (per entrance cable)	\$13.35
Cross-Connects	2-wire	RC (per cross-connect)	\$0.30
	4-wire	RC (per cross-connect)	\$0.50
	DS1	RC (per cross-connect)	\$8.00
	DS3	RC (per cross-connect)	\$72.00
	2-wire	NRC (first cross-connect)	\$19.20
	4-wire	NRC (first cross-connect)	\$19.20
	DS1	NRC (first cross-connect)	\$155.00
	DS3	NRC (first cross-connect)	\$155.00
	2-wire	NRC (each additional cross-connect)	\$19.20
	4-wire	NRC (each additional cross-connect)	\$19.20
	DS1	NRC (each additional cross-connect)	\$27.00
	DS3	NRC (each additional cross-connect)	\$27.00
POT Bay	2-wire	RC (per cross-connect)	\$0.40
	4-wire	RC (per cross-connect)	\$1.20
	DS1	RC (per cross-connect)	\$1.20
	DS3	RC (per cross-connect)	\$8.00
Additional Security Access Cards		NRC-ICB (each)	\$10.00

Schedule of Rates and Charges (cont.)

<u>Rate Element Description</u>	<u>Type of Charge</u>	<u>Charge</u>
Direct Connection (Note 4)		
(1) Fiber Arrangement	RC (per cable, per linear foot)	\$0.06
-with Initial Application	NRC (per Arrangement)	n/a
-Subsequent to Application	NRC (per Arrangement)	\$246.00
(2) Copper or Coaxial Arrangement	RC (per cable, per linear foot)	\$0.03
-with Initial Application	NRC (per Arrangement)	n/a
-Subsequent to Application	NRC (per Arrangement)	\$246.00
Security Escort		
Basic - first half hour	NRC-ICB	\$41.00
Overtime - first half hour	NRC-ICB	\$48.00
Premium - first half hour	NRC-ICB	\$55.00
Basic - additional half hour	NRC-ICB	\$25.00
Overtime - additional half hour	NRC-ICB	\$30.00
Premium - additional half hour	NRC-ICB	\$35.00

Notes

NRC: Non-recurring Charge - one-time charge

RC: Recurring Charge - charged monthly

ICB: Individual Case Basis - one-time charge

- (1) **Subsequent Application Fee.** BellSouth requires the submission of an Application Fee for modifications to an existing arrangement. However, when the modifications do not require BellSouth to expend capital (e.g., additional space or power requirements, BST termination/cross-connect equipment, etc.), BellSouth will assess the Subsequent Application Fee in lieu of the Application Fee.
- (2) **Space Preparation Fee.** The Space Preparation Fee is a one-time fee, assessed per arrangement, per location. It recovers costs associated with the shared physical collocation area within a central office, which include survey, engineering, design and building modification costs. BellSouth will pro rate the total shared space preparation costs among the collocators at each location based on the amount of square footage occupied by each collocator. This charge may vary depending on the location and the type of arrangement requested.

Schedule of Rates and Charges (cont.)

Notes (cont.)

- (2) (cont.)
- Space Enclosure Construction Fee. The Space Enclosure Construction Fee is a one-time fee, assessed per enclosure, per location. It recovers costs associated with providing an optional equipment arrangement enclosure, which include architectural and engineering fees, materials, and installation costs. This fee is assessed in 100 square-foot increments, with a minimum space enclosure size of 100 square feet. Interconnector may, at its option, arrange with a BellSouth certified contractor to construct the space enclosure in accordance with BellSouth's guidelines and specifications. In this event, the contractor shall directly bill Interconnector for the space enclosure, and this fee shall not be applicable.
- (3) Additional Engineering Fee. BellSouth's engineering and other labor costs associated with establishing the Physical Collocation Arrangement shall be recovered as Additional Engineering charges, under provisions in BellSouth's F.C.C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges shall be provided by BellSouth in the Application Response.
- (4) Direct Connection. As stated in Article I.B of the Collocation Agreement, Interconnector may connect to other interconnectors within the designated Central Office in addition to, and not in lieu of, interconnection to BellSouth services and facilities. Interconnector must use its Certified Vendor to place the direct connection. The Direct Connection NRC is assessed when direct connection is the only work requested by Interconnector. If any other work in addition to the direct connection is being requested, whether for an initial installation of a Collocation Space or for an augmentation to an existing Collocation Space, an Application Fee or a Subsequent Application Fee will be assessed in lieu of the Direct Connection NRC. Construction charges may also apply; BellSouth shall provide an estimate of these charges in the Application Response.

Bona Fide Physical Collocation Arrangements

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

Central Office Name:
Central Office CLLI Code:
City:
State:
Date of Bona Fide Firm Order:

Attachment 3

REGIONAL AUDIT OF BELLSOUTH AND CERTAIN AFFILIATED COMPANIES

December 17, 1993



**NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS
1102 Interstate Commerce Commission Building
Constitution Avenue and Twelfth Street, NW
Post Office Box 684
Washington, DC 20044-0684
Telephone No. (202) 898-2200
Facsimile No. (202) 898-2213**

Price: \$30.00

there is a significant difference between discovery and auditing. The brief points out that the PSC internal procedures clearly distinguishes auditing from discovery and excludes auditors from the discovery process.

On July 19, 1993, Commissioner Clark held a "status" meeting in Docket No. 920160-TL. At this meeting all past due and incomplete responses to staff audit requests were addressed. New due dates were established. In response to a Company motion for more time to respond to audit requests, Commissioner Clark ruled that a fifteen day turnaround time is appropriate recognizing the complexity of this audit. The Commissioner made it clear that this was an audit not subject to discovery rules and the fifteen days was unique to this audit.

On August 27, 1993, Commissioner Clark held a second "status" meeting. At this meeting the Company represented that its affiliate, BellSouth Enterprises, to whom the Audit Team directed many requests, would comply to some of the audit requests but not under the timeframes established by Commissioner Clark. As a result, Commissioner Clark sent a letter to John Clendenin, CEO of BellSouth Corporation, requesting his assistance in getting BellSouth Enterprises to comply to audit requests on a timely basis. The Company responded by stating that "BellSouth Enterprises is committed to cooperation with the Florida Commission, within the law and the extent of its available resources, to provide timely and complete responses to requests that your audit team may make." Emphasis added. Obviously, the level of cooperation depends on the Company's interpretation of "within the law" and its designation of what resources will be available.

On October 4, 1993 the Florida Supreme Court heard arguments regarding access to affiliate records. As of this writing, a decision is pending.

On November 24, 1993 the Audit Team provided the Company a draft of the audit report and workpapers. The purpose was to give the Company time to verify the statements of facts in the report and designate claimed proprietary information in preparation for the exit conference scheduled for December 10, 1993. On December 8, 1993, the Company informed the Audit Team it will not attend the exit conference and plans on responding to the audit by way of rebuttal testimony and a "parallel" audit conducted by Deloitte and Touche CPA firm.

In summary, the Audit Team attempted to evaluate whether cross subsidy exists between BSTI's regulated and non regulated operations which is a national concern as evidenced by the previously mentioned NARUC resolution. Because of limited resources, the staff through analytical review limited its audit program to a relatively small number of affiliates and transactions. The Company displayed a consistent pattern of obstructionist behavior since May of 1992. Since an open and cooperative environment is essential for effective auditing, many of the audit objectives were not fulfilled. The proliferation of diversification activities by not only BellSouth but other telephone and electric companies has complicated the regulatory process. It will require regulation beyond the utility. The extent of that regulation needs to be defined.

Attachment 4

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The BellSouth Telephone
Operating Companies

AAD 93-148

ORDER TO SHOW CAUSE

Adopted: February 24, 1995;

Released: March 3, 1995

By the Commission:

1. At the direction of this Commission, the National Exchange Carriers' Association, Inc. ("NECA") hired Ernst and Young to conduct an independent audit of carrier-reported adjustments to the Common Line ("CL") revenue pool for 1988 and the first quarter of 1989.¹ Our subsequent review of that Commission-mandated audit revealed apparent violations of our accounting rules and reporting requirements by BellSouth Telephone Companies ("BellSouth") during the audit period. These apparent violations may have continued beyond the period covered by the audit. This Order to Show Cause sets forth those apparent violations and directs BellSouth to show cause why this Commission should not: (1) issue a Notice of Apparent Liability for Forfeiture ("NAL") for apparent violation of Section 220(d) of the Communications Act of 1934, as amended;² (2) require BellSouth to adjust its price cap indexes; and (3) require BellSouth to improve its internal processes to bring them into compliance with Commission rules and orders.

2. Enforcing our accounting rules and reporting requirements is essential for the Commission to carry out its statutory obligations to ensure that rates for telecommunications services remain just and reasonable. Our ability to

carry out these obligations is impaired if we cannot rely upon the information that carriers are required to submit about the costs of their operations and their allocations of those costs, or if those allocations are made improperly. As the telecommunications marketplace continues to diversify, with carriers providing more and more nonregulated services, our enforcement of accounting safeguards will become even more important if we are to continue to protect ratepayers from being overcharged for interstate services.

I. BACKGROUND

3. Our rules require the LECs, on a monthly basis, to report to NECA their revenue, expense and investment data. NECA uses these data to compute each LEC's monthly pool shares.³ Because LECs do not have complete data available when they first report to NECA, the LECs initially report estimated data. In the following months, the LECs are required to reconcile their estimates with actual results. To ensure the accuracy of the reconciliation process and because even the best accounting systems sometimes fail to prevent errors, NECA procedures allow the LECs twenty-four months to reconcile and correct previously submitted data. Thus, in each monthly "settlement cycle," LECs report estimated data for the current month as well as adjusted data for the preceding twenty-four months.

4. In the December 1988 settlement cycle, certain LECs reported unusually large adjustments to the CL pool. Commission staff audited the larger of these adjustments and found that they appeared to have been encouraged by NECA Board members representing the BOCs and further found them apparently inconsistent with the Commission's rules. As a result, the Commission issued *Notices of Apparent Liability for Forfeiture and Orders to Show Cause* against the BOCs that filed these adjustments.⁴ The Commission also issued a letter of reprimand to the NECA Board of Directors and required, *inter alia*, that NECA hire an independent auditor to perform a comprehensive audit of significant adjustments the BOCs reported to the CL pool for 1988 and 1989.⁵

¹ NECA collects cost data, including revenue, expense and investment data, from all local exchange carriers ("LECs") on a monthly basis. These data are then used to develop LEC-specific revenue requirements which are designed to recover those LEC-incurred costs that are allocated to the interstate jurisdiction under our jurisdictional separations rules, 47 C.F.R. Part 36. The revenue requirement development process is called "pooling" because, initially, all LEC-submitted cost data are combined ("pooled") based on whether they are non-traffic sensitive (e.g., CL) or traffic sensitive ("TS") in nature. Accordingly, NECA administers two revenue pools. Non-traffic sensitive, CL costs are pooled to develop CL revenue requirements, and TS costs are pooled to develop TS revenue requirements. The revenues required to recover CL costs are collected through (1) carrier common line charges billed to the interexchange carriers, (2) subscriber line charges billed to end users and other customers, and (3) surcharges assessed against special access customers. These charges are set forth in tariffs NECA prepares for pool members, primarily the smaller, independent LECs. Other LECs -- including the Bell Operating Companies ("BOCs") -- currently do not participate in the cost recovery pools and, instead, prepare their own access tariffs. As explained *infra*, however, the pools are calculated based on revenue data provided by all LECs, and revenue data reported to NECA by

the large carriers will, therefore, affect the charges of pool members. Moreover, during the time period covered by the audit, our rules required all LECs to participate in the CL pool.

² 47 U.S.C. §220(d). The BellSouth operating companies are the South Central Bell Telephone Co. (SCB) and the Southern Bell Telephone and Telegraph Co. (SBT).

³ 47 C.F.R. §64.605.

⁴ See, e.g., *Southwestern Bell Telephone Co., Notice of Apparent Liability for Forfeiture and Order to Show Cause*, 5 FCC Rcd 7179 (1990). The Commission subsequently entered into Consent Decrees with the carriers thus resolving these initial actions without determinations of liability. See, e.g., *Southwestern Bell Telephone Co., Consent Decree Order*, 7 FCC Rcd 7692 (1992).

⁵ Letter from Donna R. Seary, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990). The letter identified "significant adjustments" as individual adjustments of \$100,000 or more that the BOCs had reported to the CL pool for 1988 and 1989 other than the adjustments that had been addressed in the Commission audit. The independent audit covered the fifteen data months from January 1, 1988 through March 31, 1989, after which time participation in the CL pool became voluntary and all BOCs left that pool. The letter, however, also required that the in-

5. NECA hired the public accounting firm of Ernst & Young to conduct the independent audit. Ernst & Young issued its report which NECA submitted to the Commission.⁶ That report included numerous audit findings against the BOCs, including BellSouth; the conduct noted by Ernst & Young has a substantial impact on the CL pool as well as on the carriers' interstate telecommunications services customers. This is because NECA distributes access tariff revenue based on reported data. Moreover, since the reported adjustments to the CL pool involve misstatements or miscalculations of interstate costs and revenues historically used to develop the reporting carrier's access charges, and, after 1988, its price cap indexes, the reporting carrier's interstate access customers, as well as end users, are affected. Although the independent auditor's report addressed the effects of the BOCs' conduct only on the CL pool, Commission auditors are examining the effect on all interstate telecommunications services. Those of the independent auditor's findings that were directed against BellSouth and that warrant Commission action are the subject of our action here. These findings are summarized below. Attachment A provides the specific details of each finding, the Commission Rules that were apparently violated, and the companies' responses to those findings. Attachment B presents, in tabular form, a summary of the apparent violations and their revenue impacts as revealed by the record to date.

II. THE FINDINGS

6. Section 220(a) of the Communications Act grants to the Commission specific authority to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject [to the Act]...." In turn, Section 220(d) authorizes the Commission to impose forfeitures on carriers who do not keep such accounts, records, and memoranda in the manner prescribed by the Commission. The findings in Attachment A appear to reveal conduct by the BellSouth carriers that violates Section 220 for the period that is the subject of the audit, namely, the period beginning January 1, 1988, and ending March 31, 1989.⁷

dependent audit "include adjustments reported after [the BOCs] left the pool on April 1, 1989" since carriers were allowed to submit adjustments for up to twenty-four months following a particular data month. *Id.* As a result, the independent auditor examined reported CL pool adjustments through March 1991.

⁶ The Ernst & Young audit report is hereafter referred to as the "Adjustments Report." On February 11, 1993, the Commission concluded that this audit had complied with Commission directives and had been performed "with a high degree of skill and care," and that the independent auditor had "exercised sound professional judgment reflecting purposes of the [audit] and the information gathered during [its] course." See Letter from Donna R. Searcy, Secretary, FCC, to Robert A. McAnion, Chairman of the Board of Directors, NECA, 8 FCC Red 1315 (1993).

⁷ 47 U.S.C. §220(a).

⁸ The apparent violations roughly fall into two categories for purposes of potential remedies. First, certain apparent violations found to fall outside the applicable limitations period for assessing forfeitures may, nevertheless, necessitate corrective action by the Commission. For example, the Commission may require adjustments to carrier price cap indexes to eliminate distortions caused by unlawful conduct. Second, other apparent violations, if found to be continuing or to have continued into the period covered by the limitations period, could support Notices of

7. The independent auditor's findings that we address here involve the misstatement or miscalculation of some \$62 million of interstate costs and revenues for the period from January 1988 through March 1989.⁸ In the aggregate, these misstatements or miscalculations apparently benefited BellSouth to the detriment of the users of BellSouth's interstate services. FNN. These misstatements or miscalculations shifted costs between or among access elements, thus apparently understating or overstating BellSouth's interstate revenue requirements for particular services. The seriousness of the misstatements is compounded here not only because of the net impact and the extent of understatements and overstatements, but also because of the scope and number of the errors or apparent violations and the fact that some of them may have continued to the date of this Order to Show Cause. The findings reveal the BellSouth carriers' apparent failure to maintain their accounts, records, and memoranda in the manner prescribed by the Commission. To the extent that this conduct has continued, it must seriously undermine the Commission's confidence that BellSouth's accounts accurately reflect Commission-mandated accounting practices and reveal the true and lawful costs of BellSouth's interstate services. Moreover, and as explained more fully below, the apparent rule violations and misstatements may very well have led BellSouth to compute price cap indexes that likely would require correction.

8. In the following paragraphs we describe the accounting irregularities that have led us to issue this Order to Show Cause.

A. Apparent Cash Working Capital Violations

9. The independent auditor found that BellSouth's calculation of cash working capital allowances apparently violated Commission rules.⁹ These allowances are supposed to reflect the average amount of investor-supplied capital needed to fund carriers' day-to-day operations.¹⁰ Each cash working capital allowance is added to a carrier's ratebase, thereby increasing the earnings the carrier is allowed. The BellSouth carriers calculate their cash working capital allowances based on lead-lag studies.¹¹ In computing cash

Apparent Liability for Forfeiture under Section 180 of the Commission's Rules, 47 C.F.R. §1.80, as well as support other remedies, such as price cap adjustments.

⁹ These figures are based on estimates BellSouth provided to the independent auditor. See Letter from Bruce Baldwin, President, National Exchange Carrier Association, Inc., to Mr. Gerald P. Vaughan, Deputy Chief, Operations, Common Carrier Bureau at BellSouth, Attachment (Oct. 12, 1992). Although those estimates encompass most of the independent auditor's findings, BellSouth did not provide interstate impact estimates of the impact of certain findings on interstate rates and revenue requirements.

¹⁰ Attachment A at 31.

¹¹ See Attachment A at 31 n.7.

¹² See Attachment A at 31 n.2. Lead-lag studies measure cash inflows and outflows in relation to the time service is rendered. Revenue and expense items that are received or paid before a service is rendered are considered "lead" items, and revenue and expense items that are received or paid after service is rendered are considered "lag" items. Lead-lag studies determine the number of days between receipt of revenues and payment of expenses.

working capital allowances, carriers are allowed to add minimum bank balances required by banks to the results obtained from these lead-lag studies. The independent auditor found that BellSouth improperly used average daily ledger balances, rather than minimum bank balances, which resulted in an overstatement of its total interstate revenue requirement of \$4.8 million.¹³

B. Apparent Jurisdictional Separations Violations

10. Responsibility for regulating telephone services is shared between this Commission, which regulates interstate service, and state commissions, which regulate intrastate service. Carriers must use a process called jurisdictional separations to apportion their costs and revenues between the state and interstate jurisdictions. The separations procedures are set forth in Part 36 of our rules.¹⁴ The independent auditor found that BellSouth apparently violated our rules in separating its investment in information origination/termination equipment and cable and wire facilities. According to the record,¹⁵ these violations may have continued beyond the audit period.

C. Other Apparent Errors

11. The independent auditor also found a number of other apparent rule violations, including BellSouth's failure to provide adequate documentation to support numerous revenue and cost adjustments,¹⁶ and its improper inclusion of presubscription revenues¹⁷ for the predesignation of interexchange carriers¹⁸ in Account 5081, Enduser revenue.¹⁹ The independent auditor also noted that a BellSouth operating company incorrectly reported an accrual adjustment to NECA resulting in an overstatement of CL revenues which would apparently violate Section 69.605 of our rules.²⁰ As such errors and other violations accumulate, the data carriers report to NECA under Section 69.605 of our rules²¹ and to us under Parts 43 and 65 of our rules²² become increasingly unreliable. Although these errors may have no current impact on BellSouth's interstate rates, their number and scope persuade us to order BellSouth to show cause why its internal accounting and accounting-related processes should not generally be brought into compliance with Commission rules and orders.

III. DISCUSSION AND CONCLUSION

A. NALS

12. We find that the BellSouth carriers' conduct appears to be inconsistent with their statutory obligation to maintain their accounts, records, and memoranda as prescribed by the Commission. Carriers must accumulate, process, and report their financial and operating data in accordance with very specific Commission requirements because we rely on those data to help us ensure that interstate telephone rates are just and reasonable. Moreover, we cannot evaluate how well our accounting rules work if carriers disregard or misinterpret these rules. Therefore, where, as appears to be the case with BellSouth, carriers either intentionally violate our rules or fail to maintain the internal systems necessary to ensure compliance with those rules, we believe forfeitures may be appropriate under Section 220 of the Act.²³

13. Section 220(d) of the Act authorizes us to impose forfeitures of up to \$6000 per carrier per day for accounting-related violations.²⁴ Obviously, any violations that continued throughout the audit period and to the present could trigger substantial sums for the two BellSouth companies based on appropriate application of the statute of limitations. In order to make a determination about the amount of any forfeitures that may lie, we direct BellSouth to state when the conduct described in paragraphs 8 through 10 and detailed in Attachment A ceased, if ever, and otherwise show cause why notices of apparent liability pursuant to section 1.80 of the Commission's rules should not issue.²⁵ BellSouth's response should include a discussion of the appropriate application of the prescribed limitations period.²⁶ BellSouth's response also should identify any mitigating circumstances we should consider in determining forfeiture amounts.²⁷

B. Adjustments to Price Cap Indexes

14. As indicated above, BellSouth did not provide estimates of the impact on interstate services rates and revenue requirements of certain conduct described in the independent auditor's findings.²⁸ So that we may assess the full impact of BellSouth's conduct, we order the BellSouth carriers to estimate the interstate impact of each of these findings, and to file those estimates with the Commission. This filing shall include estimates of the effect of each of the additional findings on BellSouth's CL, TS, special access, billing and collection, and interexchange costs and

¹³ Attachment A, at 2.

¹⁴ 47 C.F.R. Part 36.

¹⁵ Attachment A, at 4-5.

¹⁶ *Id.*, at 8-9.

¹⁷ Presubscription revenues refer to the charges that LECs assess when an end user decides to change his or her primary interexchange carrier.

¹⁸ Under our rules, an end user has the right to select one interexchange carrier as his or her primary carrier. See *Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 911 (1985) (describing the presubscription process LECs must follow).

¹⁹ Attachment A, at 9-10. Section 32.5081 of our rules, 47 C.F.R. § 32.5081, states that the end user revenue account (Account 5081) shall contain the federally tariffed monthly flat rate charge end users must pay. The independent auditor found

that BellSouth improperly included presubscription revenues from its customers' predesignation of their primary interexchange carriers, in Account 5081.

²⁰ *Id.* at 9.

²¹ 47 C.F.R. §69.605.

²² 47 C.F.R. Parts 43, 65.

²³ Section 220(d) provides for forfeitures if a carrier fails to keep its accounts, records and memoranda in the manner prescribed by the Commission. 47 U.S.C. §220(d).

²⁴ 47 U.S.C. §220(d). Prior to December 19, 1989, the forfeiture amount was fixed at \$500 per violation per day.

²⁵ 47 C.F.R. §1.80.

²⁶ Although BellSouth's violations began January 1, 1988, we would assess forfeitures only for the period allowed for by limitations period. See 47 C.F.R. §1.80(c)(2).

²⁷ See 47 U.S.C. §504(h).

²⁸ See *supra* note 9. These findings are discussed in paragraphs 19 through 21 of Attachment A.

revenues for the period January 1, 1988 to the public release date of this Order to Show Cause. We also direct BellSouth to provide estimates of the impact on the operating companies' interstate revenue requirements attributable to all conduct discussed in this order and in Attachment A that continued beyond the period of the audit, and to file these estimates with its response.

15. Since January 1, 1991, the Commission has regulated BellSouth's interstate access charges using the LEC price cap rules.²⁹ Under these rules, BellSouth's initial price cap indexes were established based upon its projected interstate access revenue requirements for the period July 1, 1990 to June 30, 1991. BellSouth's calculation of those revenue requirements may have reflected the practices detailed in Attachment A. Because, under price cap regulation, each succeeding price cap index for a basket of services is a function of an initial price cap index for that basket, BellSouth's price cap indexes for its interstate services (and, by definition, its interstate rates) would have continued to reflect the impact of any improper practices.³⁰ Absent Commission action, BellSouth's future indexes would reflect any overstatement as well. Therefore, we order BellSouth to show cause why we should not require it to reduce its current price cap indexes to remove any overstatement.³¹

C. Corrective Action

16. Finally, we tentatively conclude that we should direct the BellSouth carriers to improve their internal processes to bring them into compliance with Commission rules and orders, and we order those carriers to show cause why such action should not be required. We will take any additional actions we believe appropriate, including issuing a further Order to Show Cause, based on BellSouth's response.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 220(d), and 504(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 220(d), & 503(b), and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why the Commission should not issue Notices of Apparent Liability for Forfeiture against these companies for failure to keep their accounts, records, and memoranda on the books and in the manner prescribed by the Commission as set out in this Order to Show Cause, including Attachments A and B which are hereby incorporated by reference, and therewith SHALL FILE any and all data and other information required by this Order to Show Cause, including information requested in Attachment A.

²⁹ See *Policies and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, 5 FCC Red 6786 (1990) (LEC Price Cap Order), *Erratum*, 5 FCC Red 7664 (Com. Car. Bur. 1990), modified on recon., 6 FCC Red 2637 (1991) (LEC Reconsideration Order), *aff'd*, *National Rural Telecom. Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

³⁰ See 47 C.F.R. §§61.44(b), 61.45(b)-(c).

³¹ To achieve this, BellSouth would need to reduce its price cap indexes by the percentage change in its July 1, 1990 to June

18. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-203, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL FILE within sixty (60) days of the release date of this Order to Show Cause interstate cost and revenue impact estimates as specified in paragraph 13, *supra*.

19. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-203, 205, 215, 217-19, & 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to adjust their price cap indexes as specified in paragraph 14, *supra*.

20. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201-203, 205, 215, 217-219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 154(j), 201-203, 205, 215, 217-19, and 220, and Section 1.701 of the Commission's rules, 47 C.F.R. §1.701, that the BellSouth Telephone Operating Companies SHALL SHOW CAUSE within sixty (60) days of the release date of this Order to Show Cause why they should not be required to improve their internal processes to bring them into compliance with Commission rules and orders.

21. IT IS FURTHER ORDERED that the Secretary shall send by certified mail a copy of this Order to Show Cause to BellSouth Telecommunications, Inc., 675 West Peachtree Street, N.E., Atlanta, Georgia 30375.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Attachment A

1. We present below the apparent violations of the BellSouth carriers based on the findings in the Ernst & Young report that prompt us to issue the accompanying Order to Show Cause. For each apparent violation, we summarize the independent auditor's finding and any BellSouth reply. We also present our preliminary evaluation of the record. In general, the violations are categorized according to the ratemaking component affected. This attachment separates the apparent violations into the following categories: cash working capital, jurisdictional

30. 1991 projected interstate access revenue requirements that results from the removal of any overstatement. These reductions to the price cap indexes would need to be apportioned among the baskets based on the relative July 1, 1990 to June 30, 1991 projected interstate access revenue requirements in each basket.